

American Chamber of Commerce in Romania



AmCham Romania Anti-corruption Guidelines

2022 revised edition

AmCham Romania warmly thanks contributors in the Corporate Governance Committee for their input on this revised edition of the Guidelines.

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Table of Contents

Introduction

Guidelines

Recruitment	-----	3
Sponsorship and donations	-----	4
Partners and contractors	-----	6
Travel, gifts and related expenses	-----	7
Political contribution	-----	8
Facilitation payments	-----	9
Tender process management (public procurement)	-----	9
Applicability of FCPA regarding associated persons	-----	10

Implementation

Internal Controls	-----	12
Risk assessment and due diligence	-----	12
Monitoring	-----	13
Top-level commitment and communication	-----	14
Conduct training	-----	15

Introduction

Corruption hinders the predictability and sustainability of an economy and affects the reputation of all players involved. This phenomenon also negatively influences the general perception towards the industries in which such events are recorded and, subsequently, the country's overall way of doing business.

The **American Chamber of Commerce in Romania** ("AmCham Romania") acknowledges that locally, based on perception and how cases are prosecuted, the public sector is mainly affected by this phenomenon. As such, the private sector can and must be part of the solutions. Private actors of all sizes should share responsibility with the institutions and authorities of the public sector in finding ways to effectively prevent corruption.

Companies and business associations, such as AmCham Romania, are increasingly engaging in sector-specific or multi-industry initiatives, locally, regionally and/or globally, to share their experiences, to learn from peers and, in partnership with other stakeholders, to contribute to levelling the playing field.

Building on its vast international experience, AmCham Romania is proposing a set of anti-corruption guidelines. If followed by companies, in correlation with their internal rules and policies, the current guidelines may prevent corruption and increase the effectiveness of internal controls and compliance programs.

The **Anti-Corruption Guidelines** (the "Guidelines") contain key principles and recommendations, as well as, guidance and implementation tools, adapted to the Romanian legal framework and business environment. The document was developed based on international toolkits and best practices of some of the largest and well-known companies in the world.

The Guidelines are structured in two chapters: (i) Guidelines including, inter alia, Hiring/Recruitment, Sponsorships, Partners and Contractors; and (ii) Implementation including, inter alia, Procedures, Monitoring, Risk Assessment and Due Diligence.

AmCham Romania calls its members to demonstrate their leadership by adopting, implementing and sharing effective anti-corruption programs, within their companies, including this Guidelines.

Guidelines

Recruitment

The recruitment process must take into consideration the possible risks that arise from the company's relations with its stakeholders.

- Each company should establish clear and efficient policies and procedures on employment, including recruitment, terms and conditions, disciplinary action and remuneration.
- The companies should periodically screen the existing functions, assessing their exposure to risks of corruption. Based on understanding such specific risks, the companies should adapt their measures of oversight for those functions most exposed to corruption. The intended objective to be attained should be to identify, reduce and contain the exposure to risks of corruption from the perspective of the employees and the recruitment practices.
- Employment conditions should include specific individual due diligence used in relation to functions identified as being exposed to corruption risks, as well as for key functions (top management and other sensible positions).
- Upon recruitment, all employment contracts should include specific clauses that reflect a zero-tolerance policy for corruption incidents.
- Internal policies, procedures and practices should foster an environment adequate to freely report actual and potential incidents of corruption, for all employees and other interested stakeholders.
- Jobs should be created to address the company's objective and realistic needs and not for relatives, friends, or at the request of a public official.
- Bonuses should reflect performance achieved only through legal and ethical means. Achieving business objectives should be rewarded but it should not encourage unethical behavior.
- No applicant recommended by a public official should be employed if such a recommendation is intended to offer unlawful gains, except objectively through the normal recruitment process and based on the same criteria, as any other applicant, for the same job.
- Special consideration should be paid to actions whereby a public official may attempt to influence the recruitment process, by asking a company's employee to help find a job for a relative or friend or may seek employment for him/herself, in anticipation of leaving his/her (public) function.
- Discussions regarding business or employment opportunities which could personally benefit any public official or during an active or anticipated public procurement, should not be undertaken with a stakeholder (especially a politically exposed person) that might be directly involved in the said opportunity.
- Any such actions, if encountered, should be disclosed immediately to the appropriate person within the company (e.g., manager, director, HR team).

Sponsorship and donations

Sponsorship and donations should be carried out in a transparent manner, avoiding conflict of interests and making sure that the funds and assets are being used for their honest intended purposes.

- Management and employees should be aware of the provisions of Law no. 32/1994 on sponsorship and of any other related regulations.
- Sponsorships and donations should focus on priority domains: humanitarian, culture, art, education, science, sports, protection of human rights, medical, social services, environment protection, restoration of historic monuments.
- Considering the aforementioned priority domains of intervention for the sponsorships and donations, main beneficiaries should be: not-for-profit organizations which are acting in Romania in the domains provided above, public authorities and public institutions, for the activities mentioned above, TV and radio broadcasts, books and publications, from the domains provided above.
- Sponsorship and donations should not be granted based on the discretionary preferences of the company's directors, officers, and employees
- No sponsorship or donation should be granted in anticipation, in recognition, or with expectations of return for any business benefit.
- Sponsorships and donations should be preceded by a thorough and properly documented risk-based due diligence, pertaining to the public activity and background of potential beneficiaries. The risk-based due diligence should cover elements such as: legal establishment, legal purpose, public image, other sponsorship projects, whether the recipient has spent prior sponsorships prudently, whether any suspicion exists that the funds could promote policies that would encourage risky company behavior or practices, if the beneficiary of the sponsorship has among its leadership or membership politically exposed persons or direct political affiliations; proportion between sponsorship funds and sponsored project(s). After the assessment, the company has to ensure that donations and sponsorships are made in a transparent manner.
- Companies shall monitor compliance with the applicable provisions of the law, considering that Romanian companies are precluded from making sponsorship contributions out of sources obtained from the State budget. Also, companies are entitled to make its sponsorships public, by promoting the company's name, trademark and image. However, such public acknowledgement must not affect, directly or indirectly, the sponsored activity and public policy. According to the law, the company is not allowed to make commercial advertisement related to the sponsorship.

Sponsorship and donations (cont'ed)

Upon establishing its sponsorship and/or donations policy, any company that follows the current guidelines should:

01

independence

preserve an independent position on public issues subject to sponsorship

02

bias

avoid bias generated through sponsorship

03

monitoring

monitor the funds provided for sponsorship purposes

04

transparency

request a project management plan regarding the sponsorship from the beneficiary

05

endorsements

avoid providing product or service endorsements in sponsorship campaigns

06

conflicts of interest

avoid conflicts of interest in promoting sponsorships

Partners and contractors

Contracts should include clear provisions focused on presenting the company's values in its business conduct. Such provisions should be able to deter corruption and limit the risks of unintended involvement of the company in the actions of the parties involved in the contract.

- The partners with whom a company has a relationship may expose it to risks of corruption. In order to protect itself against such risks, the company must know its business partners, and in particular their business practices. This activity involves assessing partners' integrity. This process of evaluating the integrity of partners is an essential measure in the prevention of corruption. It aims to enable the company to decide whether or not to enter into a relationship with a business partner, to continue a relationship or to terminate it in view of the risks of corruption that it could present.
- Companies should assess their exposure to corruption risks arising from their relations with associated persons and should apply proper due diligence procedures in order to mitigate associated corruption risks.
- Contractual provisions may refer to actions to identify, report and react to actions of bribery, extortion, fraud, cartels, abuse of power, embezzlement, trading in influence, money laundering, and any other criminal activity.
- Confidentiality obligations should not bar reporting a breach of law.
- Companies should make known to the other contracting parties any relevant anti-corruption obligations and should provide expressly for enforcement and sanctions for breaches of the company's anti-corruption rules, including suspension of contract in case of suspicion of corruption, whether arising in connection with actions taken in performing the contract or in other dealings of the contractual partner.
- Training can be made available to enable contractors to recognize and abstain from / report bribery and other forms of corruption; training materials should be periodically updated.
- Fees or other compensation with respect to a contractual service should be expressly stated in the contract and should be proportionate to the services provided. Invoices should be thoroughly reviewed, and processed payments should be monitored carefully to avoid their use for corruption activities.

Travel, gifts and related expenses

While engaging with public officials, companies should observe principles such as integrity, transparency, accuracy of transactions and expenses, responsibility, compliance with existing regulations and to avoid conflicts of interest.

- Companies must refrain from giving anything of value to public officials in order to obtain or gain preferential treatments; a gift should not, in any way, be aimed at influencing the impartiality or fairness of the public official.
- Companies' employees should refrain from receiving anything of value in order to perform any preferential treatments; a gift should not, in any way, be aimed at influencing the impartiality or fairness of the company's employees.
- Gifts should be of symbolic or limited value and not risk the appearance of impropriety, as it should be stated in a Gifts and Hospitality dedicated policy made public to all interested parties.
- Companies should ensure transparency of collaborations with public institutions, by providing them with a statutory framework. Any kind of collaboration with public institutions and public officials (e.g. conferences, joint-projects), should be confined to clear rules, and, where possible, signed documents. The transparent procedure is meant to protect both parties, while ensuring an effective collaboration.
- Companies may increase transparency and traceability by addressing invitations to conferences, other events, joint projects to the unit where a public official serves (and not the individual) or to the official, but through the unit (and not directly to the official).
- Companies should not pay honoraria to public officials. Travel expenses may be reimbursed if there is a legitimate business purpose but will be made directly to the hotel/airline or other service providers. Meals should be reasonable in cost. Cash or cash equivalents (such as gift cards) should not be offered by companies to public officials.
- Where available, the Ethical Code of the company's industry should be followed, unless the company's own ethical practices are stricter.

Political contribution

Whenever engaging in political contributions, companies should observe the provisions of the relevant legal framework which sets forth a set of rules meant to ensure transparency, prevent conflict of interests, and warrant that the constitutional purposes of the political process are attained.

- Management and employees should be aware of the provisions of Law no. 334/2006 regarding political contributions and campaign financing, as well as any other related regulation.
- Companies should implement internal policies with respect to political contributions, which should observe the principles stated by Law no. 334/2006 and may contain provisions such as: annual limits for donations made to political parties (in accordance with the law), transparency of donations and prohibition of donations from foreign legal entities.
- Political contributions, in general, should reflect the company's interests and not the political opinions of its directors, officers, and employees.
- Political contributions should be made in consideration of improving the living standards of the society and of the entire business community and not to generate gains for a particular company or person.
- No political contribution shall be granted in anticipation, in recognition, or in expectation of any return of business benefit.
- Political contributions should be preceded by a thorough and properly documented risk-based due diligence, pertaining to the public activity and background of political parties and candidates. The focus should be on, inter alia: policies, political values, purposes and actions; elected officials' prior voting records; demonstrated leadership or potential for leadership; involvement with and position on issues affecting business, social security, health care, education, and the environment. Additionally, the following aspects may be considered: whether the recipient is known by the company; or whether there is reason to believe that the funds could promote policies that would encourage risky company behaviour or practices.
- Companies should make proper public disclosure in respect to any political contribution projects and provide the grounds substantiating the financing offered.
- Expenditures from corporate funds on political contributions should be posted on the company's website.

Facilitation payments

Facilitation payments are not permitted under Romanian law.

- Facilitation payments are those payments made in order to secure or expedite the performance of a routine or necessary action (e.g., payments for processing visas, customs procedures, permits, licenses, mail service, inspections, phone services, power and water supply, loading and unloading cargo or medical services).
- Companies should prohibit the use of facilitation payments and communicate such ban through ethics and compliance programs to all employees and interested parties.
- Companies should ensure enhanced control over all payments and outgoings and greater visibility over advances or special payments and any other unusual transactions.
- Companies should ensure that their employees do not accept facilitation payments in order to perform their contractual duties.

Tender process management

Specific anti-corruption policies should refer to the public procurement field, due to risks that are traditionally observed in relation to such a process.

- Companies should make clear that it is prohibited to offer, to promise or grant intentionally any undue pecuniary or other advantage, directly or indirectly, to a public official, in order for such person to act or refrain from acting in relation to the performance of his or her official duties, in order to obtain benefits or other improper advantage.
- Whenever hiring an agent or consultant to assist in a public procurement procedure, it should be ensured that such has agreed with the anti-corruption guidelines, referred to herein. After contracting the agent or consultant, adequate and efficient measures to monitor and ensure the compliance of the agent or consultant are necessary to be implemented.
- Companies should have clearly stated sanctioning procedures, disciplinary procedures and sanctions for breaches of companies' anti-corruption rules, whether by employees, representatives or contractual partners.
- Companies should promote transparency for all activities related to and secure disclosure of relevant information in connection with public procurement procedures.

Applicability of FCPA regarding associated persons

Companies may incur liability for failure to prevent bribery committed by any of their associated persons. Companies may be held liable even if they have not directly participated in or have had no knowledge of the act of bribery, nor is it necessary for the associated person to be convicted of bribery.

- The FCPA's anti-bribery provisions apply to entities and individuals that are (1) Issuers; (2) Domestic Concerns; or (3) other persons acting within the United States, including a non-US entity or national, who does any act in furtherance of a corrupt payment within the United States.
- Covered persons also include officers, directors, employees, and agents of issuers and domestic concerns, as well as stockholders acting on behalf of an issuer or domestic concern, regardless of nationality.
- The definition of covered persons does not include foreign officials. That is, the FCPA does not criminalize the receipt or acceptance of a bribe regardless of the theory of liability. Foreign officials may be charged for related crimes, such as money laundering.
- The government must also prove a jurisdictional nexus between the covered person and the US. This requires proof that:
 - the conduct was committed by a "US person," a US citizen, national, or resident or entity organized under the laws of the US;
 - the covered person used the US mail or other means or instrumentality of interstate commerce in furtherance of the corrupt payment; or
 - the covered person acted in furtherance of the corrupt payment while in the territory of the US.

Implementation

Internal controls

It is fundamental to set out formal written policies regarding anti-corruption, so that management and employees understand what is expected of them and what they can expect in return. Policies also help to create an environment, where issues are dealt with fairly.

- The relevant procedures, which should be of general application, should be assessed and adapted to ensure the effectiveness of the company's internal controls, ethics, and compliance program or measures.
- Such procedures should be proportionate to the corruption risks the company faces and the nature, scale and complexity of its activity. Procedures for small and medium-sized companies are likely to differ from procedures of large multinational organizations.
- Financial and accounting procedures (including internal controls) have to be put in place, in order to ensure the maintenance of fair and accurate books, records and accounts, which may prevent corruption incidents.
- Disciplinary procedures, as well as, speak-up procedures ("whistle-blowing") addressing incidents of corruption, and the company's guidelines or measures regarding corruption, need to be implemented.

Risk assessment and due diligence

- Risks should be assessed and monitored continuously.
- Companies must undertake effective due diligence efforts.
- Based on the findings of risk assessments and due diligence performed, companies should design and implement adequate rules to avoid the potential negative exposure related to all parties to a business relationship, including supply chains, agents, intermediaries, and joint ventures partners.
- The more comprehensive the risk assessment is, the more confident a company can be in adequately analyzing, identifying, and implementing rules and mechanisms to limit corruption risks.
- A thorough and complete risk assessment process also places a company in a position to claim no or limited responsibility, should unforeseen issues arise, that it can demonstrate to be beyond possibility of the company's risks management. A thorough risk assessment adds both efficiency and credibility to anti-corruption compliance efforts.
- The actual procedures to be conducted and the depth of the risk assessment vary depending on the company particulars.
- The procedures involve information, collection and analysis, generally through document collection, interviews and financial analysis.

Risk assessment and due diligence (cont'ed)

- More robust risk assessments also involve transaction testing which can be performed at the corporate level and in high-risk locations.
- The output of the risk assessment is often a detailed report on the company's corruption risks and gaps in its current anti-corruption compliance regime.
- The output should consist of detailed recommendations for the design and implementation of the compliance program elements.
- "Due diligence" is activity of researching, investigating, assessing and monitoring, which the company should carry out, on business relationships, to ensure that it is associated with stakeholders and personnel that will behave in a manner consistent with its policies and values.
- Due diligence procedures should be carried out on contractors, suppliers, or agents.
- Companies should develop a policy and specific procedures for due diligence, in any contemplated merger, acquisition or joint venture.

Monitoring

The implementation of anti-corruption rules should be monitored in order to ensure that they are operating effectively over time and to identify new and emerging risks to which companies may be exposed.

- Effective monitoring measures may include conducting anti-corruption compliance program reviews on a periodic or regular basis, depending on the associated perceived risk of the operations within a certain area.
- The persons responsible for monitoring need to have a thorough understanding of the domestic and international legislation and have the knowledge and experience to identify suspect and high-risk transactions, especially considering sanctions lists, for testing and to recognize red flags for potential violations.
- Anti-corruption compliance program reviews have a powerful deterrent effect and they send a message that senior management is committed towards compliance and the enforcement of rules.
- Appropriate follow-up measures, including contractual and disciplinary actions are crucial to creating an integrity focused culture.
- Senior management should periodically report the results of compliance program reviews to the relevant bodies (e.g., Board of Directors, Supervisory Committee).

Top-level commitment and communication

The “tone at the top” represents the starting point for an effective communication of anti-corruption mechanism and should express zero tolerance towards corrupt activities.

- The commitment of the top-level management to corruption prevention may include the communication of a company's anti-corruption culture and an appropriate degree of top-level involvement in developing prevention procedures.
- The internal policies should inform about the sanctions and also explain the benefits for employees and the company for rejecting bribery (e.g. reputation of the company, business partners' confidence and the incentives for employees to do business in such a compliant manner).
- Top management should communicate the commitment to carry out business fairly, honestly, openly and transparently.
- Top-management should clearly refer to the company's involvement in any collective action against corruption in its business sector while expressing, in all possible manners (media, speeches, blogs, emails or face to face meetings) the company's intention of not being associated to any acts of corruption, either directly or through third parties and the intention to carry out business in a transparent manner.
- Business partners should be informed of the consequences of not complying with the contractual provisions relating to anti-corruption.
- The management must adopt a whistleblowing strategy and have organized the design of whistleblowing procedures and of the reporting channel, implementation guides, training, monitoring etc., in accordance with applicable legislation and best practices.
- All relevant aspects related to whistleblowing should be periodically communicated throughout the company, in a manner customized to each employee's job function.
- The various forms of communication, which can be adjusted to different audiences, within the company, should be kept generally available on the company's website or on a company's intranet site.

Conduct training

Training should be provided to management and employees in order to develop the knowledge and skills needed to employ the organization's procedures to deter, obstruct and/or deal with any corruption related problems.

- Ongoing updated training in anti-corruption is imperative in order to ensure that business is conducted in an ethical manner.
- All relevant personnel should be trained on a regular basis, beginning with induction and carrying on periodically throughout the period of employment to recognize and abstain from / report all forms of corruption.
- Training should highlight the company's policy that it does not tolerate corruption, explain its anti-corruption policies, discuss potential "red flags" or problem situations and provide guidance to employees to get help speak up and receive support in relation to their concerns.
- Companies should have processes in place to ensure continuous refreshing of the training material.
- Adequate training tools may be live classroom training and web-based training.
- Where appropriate, based on risk assessments, contractors and suppliers should receive training on the companies' internal policies, in order to ensure ethical business practices.

Get in touch

-  11 Ion Câmpineanu St, Union International Center, 4th floor
 -  +4 021 312 48 34 / +4 021 315 86 94
 -  amcham@amcham.ro
 -  www.amcham.ro
-